(1) S.B. CIVIL WRIT PETITION NO.7341/2007
Ram Lal Bishnoi Vs. Rajasthan Civil Services Appellate Tribunal & ors

(2) S.B. CIVIL WRIT PETITION NO.7342/2007
Babu Ram Bishnoi Vs. Rajasthan Civil Services Appellate Tribunal & ors.

(3) S.B. CIVIL WRIT PETITION NO.7343/2007
Prema Ram Vs. Rajasthan Civil Services Appellate Tribunal & ors.

(4) S.B. CIVIL WRIT PETITION NO.7345/2007
Janvata Ram Bishnoi Vs. Rajasthan Civil Services Appellate Tribunal & ors

(5) S.B. CIVIL WRIT PETITION NO.7346/2007
Naval Ram Choudhary Vs. Rajasthan Civil Services Appellate Tribunal & ors.

(6) S.B. CIVIL WRIT PETITION NO.7347/2007
Narendra Kumar Vs. Rajasthan Civil Services Appellate Tribunal & ors.

(7) S.B. CIVIL WRIT PETITION NO.7348/2007
Jagdish Shahu Vs. Rajasthan Civil Services Appellate Tribunal & ors.

Date of order : 19th November 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Imran Khan, for the petitioners.

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BY THE COURT:

By way of these writ petitions, the petitioners, working on the post of teacher seek to question the orders of transfer whereby each of them has been transferred from the present place of posting within one Panchayat Samiti to another place of posting within some other Panchayat Samiti; and so also the common order dated 03.10.2007 made by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing their respective appeals against the said transfer order. For common questions of law being involved and the petitioners

essentially raising identical contentions, these petitions have been heard together; and, for this Court being satisfied that the petitions do not merit admission, are taken up for disposal by this common order.

Each of the petitioners, working on the post of Teacher Gr.III has been transferred from a Government Primary/Upper Primary School within Panchayat Samiti, Sanchore to some other Government Primary/Upper Primary School within other Panchayat Samitis of Raniwara, Bhinmal, Sayala. The petitioners filed individual appeals before the Tribunal against such transfer orders that have been rejected by the Tribunal by the impugned common order dated 03.10.2007 with the findings that the transfer order was made by the State Government within its powers under Rule 289 and 290 of the Rajasthan Panchayati Raj Rules, 1996 ('the Rules of 1996') and that it was for the administration to decide as to the services of which employee should be taken where.

Seeking to assail the transfer order and the order passed by the Tribunal, it has been contended on behalf of the petitioners that they have been transferred from one Panchayat Samiti to another Panchayat Samiti without any administrative exigency and contrary to the transfer policies; that the State Government was not competent to issue such transfer orders, which could be made only with the

concurrence of Panchayat Samiti by the District Establishment Committee. It is asserted on behalf of the petitioners that at present within Panchayat Samiti, Sanchore about 239 posts of Teacher Gr.III are lying vacant as established by the certificate dated 06.10.2007 issued by the Block Primary Education Officer, Panchayat Samiti, Sanchore and it is also contended in relation to some of the matters that nobody has been posted vice the petitioner. Thus, according to the petitioners, the orders of transfer have been made without regard to the administrative exigencies. It is also suggested that the petitioners have not requested for any such transfer and the State Government could not have issued their transfer orders. Learned counsel for the petitioner has also referred to an order made by this Court at its Jaipur Bench in S.B.Civil Writ Petition No.8105/2007: Babulal Vs. R.C.S.A.T. and others on 04.10.2007 and submitted that the case of the petitioners being similar to said case of Babulal, the order as made therein permitting the petitioner to file a representation and directing the Dy. Secretary to decide the same within a period of one month and maintaining of status quo for a period of one and half months may also be made in relation to the present petitioners.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner,

this Court is clearly of opinion that these writ petitions remain bereft of substance and do not merit admission. No such case is made out where the impugned transfer order could be considered violating any statutory requirement or suffering from want of authority.

The submission as made by the learned counsel that the posts remain vacant and there is no administrative exigency wherefor the petitioners were required to be transferred has only been noted to be rejected. It remains a matter for authorities concerned to decide as to which particular post is to be manned by whom; and as to how the manpower is to be deployed. Ultimately, as to who should be transferred where is the matter for the appropriate authority to decide as pointed out by the Hon'ble Supreme Court in the case of S.L.Abbas Vs. Union of India: AIR 1993 SC 2444. Each of the petitioners holds a transferable post, and has no such right to question his transfer order merely because nobody is posted vice him or if any post remains vacant.

The submissions in relation to the operation of the statute as suggested on behalf of the petitioner do not appear to be of correct interpretation of the plain words of the relevant provisions; and do not make out a case of want of power and authority with the State Government to issue the transfer and posting order like the impugned one in relation to the

petitioners whereby they have been transferred from one Panchayat Samiti to another.

Sub-section (8-A) of Section 89 of the Rajasthan Panchayati Raj Act,1994 ('the Act of 1994') reads as under:-

> " Notwithstanding anything contained in Sub-sec. (8), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to a Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under Sub-sec. (8), or the rules thereunder:"

Rule 289 and 290 of the Rules of 1996 read as under:-

> "**Rule 289. Transfer within the district.**-(1) The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the district Establishment Committee by the Panchayat Samiti.
>
> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the district Establishment Committee.
>
> (3) State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari as the case may be, shall carry out orders of the State Government.
>
> (4) On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred.

> **Rule 290. Transfer outside the district.**- (1) The name of the employee desiring transfer or desired to be transferred from one district to another shall be communicated to the Director by the Panchayat Samiti or the Zila Parishad, as the case may be.
>
> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or the Zila Parishad concerned on the recommendation of the State Government against the vacant posts existing at such time. The State Government may transfer any member of service from one Panchayat Samiti to another Panchayat Samiti within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under these rules. Chief Executive Officer or Vikas Adhikari concerned shall carry out such orders.
>
> (3) On transfer of an employee, his confidential roll and service record will be transmitted without avoidable delay to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."
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> (underlining supplied for emphasis)

Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila

Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.

A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.

As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly

of opinion that the transfer orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement.

The submission that the petitioners have not made any request for transfer has no relevance or bearing on the transfer order made by the State Government. It does not appear anywhere from the scheme of the Act of 1994 and the Rules of 1996 that the employees like the petitioners could only be transferred at their request and not otherwise.

The submissions as made by learned counsel for the petitioners with reference to the ex parte order made in disposal of Writ Petition No.8105/2007 on 04.10.2007 cannot be accepted for this Court having not laid down any rule of universal application that in such transfer matters invariably the petitioner ought to be left to make representation and until disposal of the representation, the transfer order would invariably be kept in abeyance. The said order is required to be read confined to its own facts and circumstances; and does not apply to the case of the petitioners. This court permitted making of representation in the said case of Babulal with reference to the ground of violation of the transfer policy

whereas it does not appear from the order impugned herein that any such ground of violation of any particular 'transfer policy' was distinctly set forth before the Tribunal in the present cases. Otherwise, the Tribunal has observed that in relation to personal difficulties the employee ought to make representation before the authorities. It is noticed that in the present cases, transfer orders were made on 07.09.2007 and the appeals were dismissed by the Tribunal on 03.10.2007. Nothing prevented the petitioners yet from making a proper representation to the authority concerned stating, if they had any grievance. However, in the overall facts and circumstances, the present one do not appear to be the cases fit enough where the order of transfer be interfered with in any manner or be kept in abeyance for the purpose of the petitioners' making a representation.

It is made clear that there is no impediment yet for the petitioners to make representation in accordance with law but and however, this Court does not find any ground in these writ petitions to interfere with the transfer order and the order passed by the Tribunal rejecting the appeals preferred by the petitioners.

The petitions fail and are, therefore, rejected.

MK **(DINESH MAHESHWARI),J.**

S.B. CIVIL WRIT PETITION NO.

Date of order : 19th November 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Imran Khan, for the petitioner

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The writ petition is rejected vide order made in S.B.Civil Writ Petition No.7341/2007 (Ram Lal Bishnoi Vs. Rajasthan Civil Services Appellate Tribunal & ors.).

B.O.

COURT MASTER